

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

JUNIPER NETWORKS, INC.,

Plaintiff,

v.

GRAPHON CORPORATION and  
VERTICAL MARKETING, INC.,

Defendants.

Civil Case No. 1:09cv287 GBL/TRJ

**JUNIPER NETWORKS, INC.’S OPPOSITION TO GRAPHON CORPORATION’S  
MOTION TO CONTINUE THE JULY 31, 2009 HEARING DATE FOR  
JUNIPER NETWORKS, INC.’S MOTION TO COMPEL**

Plaintiff Juniper Networks, Inc. (“Juniper”) respectfully submits this opposition to GraphOn Corporation’s (“GraphOn”) motion to continue the July 31, 2009 hearing date for Juniper’s motion to compel GraphOn to produce technical documents from its source code repository (Docket No. 77).

Under normal circumstances, Juniper would agree to GraphOn’s request to postpone the hearing date, and indeed Juniper has previously agreed to continue other deadlines in this case. But normal circumstances are not present here. GraphOn’s production of technical documents from its source code repository is now over one month overdue, and given the discovery schedule, Juniper cannot wait another week to receive these documents.

Juniper appreciates GraphOn’s counsel’s scheduling issues, but GraphOn’s assertion that Juniper’s motion to compel “was a surprise”<sup>1</sup> is without merit. As Juniper detailed in its motion to compel, Juniper first notified GraphOn of the deficiencies in its technical document production on June 26, 2009, over one month ago.<sup>2</sup> And, on July 17, 2009, counsel for Juniper

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<sup>1</sup> GraphOn Mot. at 1.

<sup>2</sup> Docket No. 70 at 2.

raised the issue of GraphOn's deficient production of these documents during the hearing on Juniper's motion to compel GraphOn to produce its source code. Alan Fisch, Juniper's lead counsel, conducted a meet and confer with Dabney Carr, GraphOn's counsel, regarding GraphOn's deficient production after that same hearing. Juniper's motion thus should not have taken GraphOn by surprise.

Moreover, as reflected in the email GraphOn attached to its motion, Juniper has offered to accommodate GraphOn's counsel's scheduling issues by consenting to GraphOn appearing without local counsel and/or via telephone on July 31, 2009.<sup>3</sup> Although Juniper does not doubt that Messrs. Carr and Angle, GraphOn's local counsel, are not available on the noticed date, it is not apparent why one of GraphOn's other five attorneys cannot participate.<sup>4</sup> Although Mr. Rounds will be in New York on July 31, he does not indicate in his declaration that he is not available to participate via phone. Juniper would be amenable to holding the hearing at any time on July 31 to accommodate Mr. Rounds's schedule. And GraphOn has made no showing that Ms. Barnard, GraphOn's chosen point of contact for all communications regarding the dispute Juniper presents in its motion, is unavailable to participate in person or via telephone.

GraphOn cites the costs of sending one of its out-of-state attorneys to argue the motion as reason to continue the hearing,<sup>5</sup> but this ignores Juniper's consent for GraphOn to appear telephonically. Furthermore, it also ignores GraphOn's previous practice in this case, as Mr. Moran, of GraphOn's Chicago law firm, appeared in person on June 18, 2009 to argue in opposition to Juniper's motion to sever and transfer GraphOn's infringement counterclaim.

As it appears that at least one or more counsel for GraphOn could appear in person or by telephone, Juniper respectfully requests that the Court deny GraphOn's motion to continue the July 31, 2009 hearing.

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<sup>3</sup> See Decl. of M. Rounds at Ex. 1.

<sup>4</sup> Another attorney from Troutman Sanders, Mary C. Zinsner, is also acting as local counsel for GraphOn. GraphOn has not represented that she is not available to participate in the hearing on July 31, 2009.

<sup>5</sup> See Decl. of M. Rounds ¶ 4.

Respectfully submitted,

/s/Coke Morgan Stewart

Date: July 28, 2009

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 28, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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